

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. DOWDELL,  
Appellant,  
vs.  
ELDON K. MCDANIEL, WARDEN; AND  
JACKIE CRAWFORD, DIRECTOR  
NEVADA DEPARTMENT OF  
CORRECTIONS,  
Respondents.

No. 46654

**FILED**

OCT 19 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order that granted a motion to dismiss.<sup>1</sup> Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

For murdering a Wyoming State Prison official during an escape attempt, the Wyoming Department of Corrections transferred appellant Richard Dowdell to Ely State Prison.<sup>2</sup> On arriving at Ely State Prison, Dowdell was assigned high risk potential status and segregated accordingly. Believing that this designation and consequent maximum

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<sup>1</sup>The complaint and appeal also named Robert Lampert as defendant and respondent, respectively; Lampert was apparently never properly served and never appeared in the district court proceedings. Accordingly, he was never a party to the district court proceedings and is not properly named in this appeal. Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979). We therefore direct the clerk of this court to remove Lampert from the caption on this court's docket.

<sup>2</sup>See NRS Chapter 215A.

security segregation at Ely State Prison was unconstitutional, Dowdell instituted the underlying action seeking declaratory, injunctive, and monetary relief.

Initially, respondents removed the case to the federal district court. The federal district court then screened the matter pursuant to the screening provision of the Prisoner Litigation Reform Act,<sup>3</sup> and based on its conclusion that Dowdell failed to state a federal claim on which relief could be granted, remanded the matter to the Seventh Judicial District Court.<sup>4</sup>

Dowdell then moved the district court to enter a default judgment against respondents. Respondents opposed the motion and moved the district court, pursuant to NRCP 12(b)(5), to dismiss Dowdell's amended complaint. The district court subsequently entered an order denying Dowdell's motion and granting respondents' motion to dismiss. This appeal followed.

Dowdell limits his appellate challenges to the district court's dismissal of his claims against respondents. Our review of the order dismissing Dowdell's claims is rigorous, as this court, in determining whether Dowdell has set forth allegations sufficient to make out a right to relief,<sup>5</sup> accepts all factual allegations in his amended complaint as true

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<sup>3</sup>28 U.S.C. § 1915A (1996).

<sup>4</sup>See 28 U.S.C. § 1915A(b)(1) (providing that a federal district court may dismiss a complaint after screening it and determining that it fails to state a claim on which relief may be granted).

<sup>5</sup>Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

and construes all reasonable inferences in his favor.<sup>6</sup> The dismissal of Dowdell's claims was proper only if his allegations, as presumed true, would not entitle him to relief.<sup>7</sup>

On appeal, Dowdell primarily argues that his allegedly indefinite high risk potential designation and resulting maximum security segregation violates the Nevada Constitution's prohibition against cruel and unusual punishment<sup>8</sup> and guarantees of due process<sup>9</sup> and equal protection.<sup>10</sup> When reviewing allegations that state constitutional provisions have been violated, this court has looked to cases interpreting analogous provisions in the United States Constitution.<sup>11</sup>

Having reviewed the record in light of the principles discussed, we conclude that the district court correctly dismissed Dowdell's claims against respondents. Dowdell failed to set forth allegations sufficient to entitle him relief on any his claims. In particular,

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<sup>6</sup>Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

<sup>7</sup>Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

<sup>8</sup>See Nev. Const. art. 1, §6; see also NRS 209.131 (prohibiting "corporal punishment and inhumane treatment" of inmates).

<sup>9</sup>See Nev. Const. art. 1, § 8(5).

<sup>10</sup>See id. at art. 4, §§ 20-21.

<sup>11</sup>See U.S. Const. amends. V, VIII, and XIV; Naovarath v. State, 105 Nev. 525, 529-30, 779 P.2d 944, 947 (1989) (cruel and unusual punishment); Barrett v. Baird, 111 Nev. 1496, 1512, 908 P.2d 689, 701 (1995) (due process); Barrett, 111 Nev. at 1509, 908 P.2d at 700 (equal protection).

accepting all of Dowdell's allegations as true, indefinitely assigning Dowdell high risk potential status, and segregating him accordingly, fails to constitute a violation of either the Nevada Constitution's or United States Constitution's provisions concerning cruel and unusual punishment,<sup>12</sup> due process,<sup>13</sup> or equal protection.<sup>14</sup> Thus, we affirm the district court's order dismissing Dowdell's claims.<sup>15</sup>

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<sup>12</sup>See Farmer v. Brennan, 511 U.S. 825, 834 (1994) (delineating the two-prong test for establishing when prison officials have violated the Eighth Amendment: 1) the alleged deprivation must be objectively, sufficiently serious and 2) in allowing the deprivation to take place, the prison officials must have a "sufficiently culpable state of mind"); see also Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982) (recognizing that prison officials' "obligation under the [E]ighth [A]mendment is at an end if [they] furnish[] sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety") (quoting Wright v. Rushen, 642 F.2d 1129, 1132-33 (9th Cir. 1981)).

<sup>13</sup>Sandin v. Conner, 515 U.S. 472, 484 (1995) (recognizing that state prison regulations give rise to a liberty interest protected by the Due Process clause only if those regulations impose an "atypical and significant hardship . . . in relation to ordinary incidents of prison life"); see also Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976) (noting that an inmate's security classification and the privileges incident to it do not necessarily invoke due process protections).

<sup>14</sup>Barren v. Harrington, 152 F.3d 1193, 1194-95 (9th Cir. 1998) (providing that a viable Equal Protection claim shows that a defendant "acted with an intent or purpose to discriminate" against the plaintiff based on membership in a protected class); see generally Jones v. North Carolina Prisoners' Union, 433 U.S. 119, 136 (1977) (recognizing that the United States Constitution does not require prison officials to treat all inmate groups alike when differentiation will avoid an imminent threat of institutional disruption or violence).

<sup>15</sup>Dowdell seems to contend that the district court erred inasmuch as the district court, in dismissing Dowdell's complaint, summarily adopted  
*continued on next page . . .*

It is so ORDERED.<sup>16</sup>

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge  
Richard A. Dowdell  
Attorney General George Chanos/Carson City  
White Pine County Clerk

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the federal district court's conclusion that Dowdell failed to state a federal claim for relief. Dowdell's reliance on any error by the district court in not more specifically delineating its conclusions concerning Dowdell's federal claims is unavailing, however. As noted, our review of the district court's order is de novo, and generally, claims concerning alleged violations of the Nevada Constitution provisions on which Dowdell bases his complaint are construed consistent with claims alleging violations of equivalent provisions in the United States Constitution. Thus, even if the district court summarily adopted the federal district court's conclusions, no error occurred. See Naovarath, 105 Nev. 525, 779 P.2d 944; Barrett, 111 Nev. 1496, 908 P.2d 689.

<sup>16</sup>Having considered all of the issues raised by Dowdell, we conclude that any of his contentions not discussed above lack merit and, therefore, do not warrant reversal of the district court's judgment.